



## BOARD OF ADJUSTMENT

### Approved Minutes

February 27, 2018, 8:30 a.m.  
Committee Room, 2nd Floor, City Hall  
101 City Hall Plaza, Durham, NC

**I. Call to Order**

Chair deLacy called the meeting to order at 8:34 a.m.

**II. Roll Call**

**Members Present:**

Regina deLacy, Chair  
Phillip Harris, Jr.  
Michael Kriston  
Randal Rogers  
Alisa Thomas  
Najuma Thorpe  
Jacob Rogers, Alternate

**Members Absent:**

Fredrick Davis  
Michael Schietzelt , Alternate

**Staff Present:**

Amy Wolff, Planner  
Bo Dobrzenski, Planning Supervisor  
Joanne Gordon, Clerk  
Don O’Toole, City Attorney’s Office  
Bryan Wardell, County Attorney’s Office

**III. Adjustments to the Agenda – B1700052 was moved to top of the agenda.**

**IV. Swearing-In of Witnesses**

Chair deLacy asked: Are there any Board members that would have any conflicts of interests with regard to the cases before us today? Chair deLacy then asked if there were any early dismissals. No conflicts of interest were noted.

**Chair deLacy read the following statement:**

This Board is a quasi-judicial Board of record and, as such, all testimony will be recorded. The proceedings of this Board will be governed by the Unified Development Ordinance, as recorded.

As Chair of the Durham Board of Adjustment, I would like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First, a staff member of the City-County Planning Department will present an overview of the case. Then the applicant presents its evidence. The opponents, if there are any, will present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments, I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows, not hearsay. All witnesses should come forward to the podium, and identify themselves each time they approach the podium. Speak directly into the microphone so their testimony can be recorded on tape. Before each application, I will read the findings that must be made to approve an application, and any testimony should be relevant to the criteria that the Board uses to determine whether to approve an application.

Any written evidence or exhibits must be presented to the Chair (Vice Chair) and a determination will be made whether it should be accepted. Written evidence or exhibits can be inspected by the opposing party. All evidence, written or oral, or exhibits can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have an opportunity to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine, you may raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would also like to remind everyone in attendance to be courteous and ask questions respectfully. If there are numerous people who will be providing the same or similar testimony either for or against an application, in the interest of time, I would request that you please select a representative to present that testimony.

I would like to note that Board members may have visited each site under consideration as part of their preparation for this meeting.

The Board will vote on each case after the presentation of all the evidence, for and against an application, and discussion among themselves concerning the case. North Carolina law requires that in order for an applicant's request to be granted for a City application before the Board, five (5) of the seven (7) voting Board members must approve the request. For a County variance request, North Carolina law requires that in order for an applicant's request to be granted, six (6) of the seven (7) voting Board members must approve the request. For other County requests, including applications for a minor special use permit, four (4) of the seven Board members, or a simple majority, must approve the request.

All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone in the audience, other than the applicant, who wishes to receive a copy of the formal order issued by this Board on a particular case, must submit a written request for a copy of the order at this hearing. Forms for this purpose are available from the City-County Planning Staff.

## **V. Hearing and Determination of Cases**

- 1. Case B1700052 – County:** A minor special use permit for an educational facility (middle school) in a residential district. The subject site is located at 501, 505, and 717 Orange Factory Road, is zoned Residential Rural (RR) and in the Rural Tier.

**Seated:** Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Kriston, Ms. Thorpe, Mr. J. Rogers

**Speakers:** Mr. Patrick Byker spoke in support, asking for a continuance of this case to March. No one spoke in opposition.

**MOTION:** Mr. Kriston made a motion that case **B1700052**, be continued to the March 27, 2018 meeting. (Kriston, Harris 2<sup>nd</sup>)

**ACTION:** Approved, 7-0

2. **Case B1700025** – City: A minor special use permit to allow a fence greater than four feet in height in the street yard. The subject site is located at 1 Penley Court, is zoned Planned Development Residential 3.510 (PDR 3.510) and in the Suburban Tier.

**Seated:** Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Kriston, Ms. Thorpe, Mr. J. Rogers

**Staff Report:** Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

**Speakers:** Mr. Eli Kitts spoke in support. No one spoke in opposition.

**Staff Recommendation:** Staff recommends that the Board grant the application with conditions.

**MOTION:** Mr. J. Rogers made a motion that case **B1700025**, An application for a **minor special use permit** on property located at **1 Penley Court** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.
- The fence height shall be a maximum of six (6) feet.

(J. Rogers, Kriston 2<sup>nd</sup>)

**ACTION:** Approved, 7-0

3. **Case B1700043** – City: A variance from a required street yard setback on North Alston Avenue. The subject site is located at 806 Juniper Street, is zoned Residential Urban – 5 (2) (RU-5(2)) and in the Urban Tier.

**Seated:** Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Kriston, Ms. Thorpe, Mr. J. Rogers

**Staff Report:** Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

**Speakers:** Ms. Megan Royall spoke in support. No one spoke in opposition.

**Staff Recommendation:** Staff recommends that the Board grant the application with conditions.

**MOTION:** Mr. Kriston made a motion that case **B1700043**, An application for a **variance from a required street yard setback** on property located at **806 Juniper Street** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.
- The minimum street yard along North Alston Avenue shall be twelve (12) feet.

(Kriston, R. Rogers 2<sup>nd</sup>)

**ACTION:** Approved, 7-0

4. **Case B1700053** – City: A minor special use permit to allow a day care facility in a residential district. The subject site is located at 1305 West Club Boulevard, is Residential Urban-5(2) (RU-5(2)) and in the Urban Tier.

**Seated:** Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers,

**Staff Report:** Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

City Attorney, Don O’Toole recommended the continuance if they they had questions for the applicant, since the applicant was not present.

**Speakers:** No one spoke in support. No one spoke in opposition.

**Staff Recommendation:** Staff recommends that the Board continue this case to the March 27, 2018 meeting.

**Motion:** Ms. Thorpe made a motion that case **B1700053**, be continued to the March 27, 2018 meeting. (Thorpe, Harris 2<sup>nd</sup>)

**Action:** Approved, 6-1 (J. Rogers voting no)

**VI. Approval of Summary Minutes from January 23, 2018**

**Motion:** Approve the Minutes from January 23, 2018

**Action:** Motion carried, 7-0 (Harris, J. Rogers 2<sup>nd</sup>)

**VII. Approval of Orders**

**Case B1700025**

**Motion:** Approve the order for case B1700025 (J. Rogers, R. Rogers 2<sup>nd</sup>)

**Action:** Motion carried, 7-0

**Case B1700043**

**Motion:** Approve the Order for case B1700043 (J. Rogers, Kriston 2<sup>nd</sup>)

**Action:** Motion carried, 7-0

**VIII. Old Business – None**

**IX. New Business - None**

**X. Adjournment**

The meeting adjourned at 9:17 a.m.

Respectfully Submitted,

Joanne Gordon, Clerk to the Board